

James A. McIntyre - 2196  
J. David Milliner - 5762  
McINTYRE & GOLDEN, L.C.  
3838 So. West Temple  
Salt Lake City, Utah 84115  
Telephone: (801) 266-3399  
Facsimile: (801) 263-1834

*Attorneys for David P. Johnson and E. Kathleen Johnson*

---

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

---

In re:

TWIN PEAKS FINANCIAL  
SERVICES, INC., Debtor.

-----  
DAVID P. JOHNSON and E.  
KATHLEEN JOHNSON,  
Plaintiffs,

v.

TWIN PEAKS FINANCIAL  
SERVICES, INC., CHAD R.  
PALMER, DOES 1 -10, et al.,  
Defendants.

**NOTICE OF DISMISSAL WITHOUT  
PREJUDICE**

Bankruptcy No. 07-25399 (Chapter 7)

Adversary No. 08-02107

Hon. Judith A. Boulden

In light of:

1. The recent conversion of the underlying bankruptcy case herein from a Chapter 11 reorganization case to Chapter 7 liquidation case, wherein no discharge can be granted to a corporate entity;
2. Case law indicating that Twin Peaks Financial Services, Inc. is not an indispensable party under Bankruptcy Rule 7019 and Rule 19 of the Federal Rules of Civil Procedure for

purposes of maintaining their claims of fraud and conspiracy to commit fraud against the other individual debtors and parties named in their related adversary proceedings Nos. 08-02109 and 08-02110; and

3. Concerns that retaining Twin Peaks Financial Services, Inc. as a party in this adversary proceeding might be contrary to the automatic stay provisions of Section 362 of the Bankruptcy Code;

Plaintiffs David P. Johnson and E. Kathleen Johnson, through counsel and pursuant to Bankruptcy Rule 7041 and Federal Rule of Civil Procedure 41(a)(1)(A)(i), hereby dismiss without prejudice the above-referenced adversary proceeding, in favor of filing an appropriate proof of claim in the underlying bankruptcy case, but reserving the right to bring a new proceeding on these same or related claims should it become necessary or expedient to do so in order to fully vindicate their rights relating thereto.

DATED this 30<sup>th</sup> day of June, 2008.

McINTYRE & GOLDEN, L.C.

/s/ J. David Milliner  
James A. McIntyre  
J. David Milliner,  
*Attorneys for David and Kathleen Johnson*

CERTIFICATE OF SERVICE

I hereby certify that on the 1<sup>st</sup> day of July, 2008, I caused to be mailed via U.S. mail, first-class postage prepaid, a true and correct copy of the foregoing NOTICE OF DISMISSAL WITHOUT PREJUDICE to the following:

Peter W. Billings, Esq.  
Gary E. Jubber, Esq.  
Douglas J. Payne, Esq.  
FABIAN & CLENDENIN  
215 South State Street, 12<sup>th</sup> Floor  
P.O. Box 510210  
Salt Lake City, Utah 84151  
*Attorneys for Twin Peaks and MNK.*

Paul James Toscano, Esq.  
10 Exchange Place, Suite 614  
Salt Lake City, Utah 84111  
*Attorney for Kenneth C. Tebbs and Melissa A. Tebbs*

Chad R. Palmer  
9307 South Copper Lane  
West Jordan, Utah 84088

Elizabeth R. Loveridge, Esq.  
WOODBURY & KESSLER  
265 East 100 South, Suite 300  
P.O. Box 335  
Salt Lake City, Utah 84110-3358  
*Trustee for Kenneth C. Tebbs and Melissa A. Tebbs*

Laurie A. Clayton, Esq.  
U.S. TRUSTEE'S OFFICE  
300 Ken Garff Building  
405 South Main Street  
Salt Lake City, Utah 84111

/s/ J. David Milliner